

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. 570 43

STEFENA BROWN, PETITIONER

VS.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED JULY 12, 1956
CERTIORARI GRANTED NOVEMBER 13, 1956

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In the United States Court of Appeals for the Sixth Circuit

STEFENA BROWN, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE
EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION

APPENDIX TO APPELLANT'S BRIEF

1

Relevant Docket Entries

1953

Apr. 24—Complaint filed—Summons issued.

Sept. 9—Answer filed.

1955

Feb. 15—Trial by Court commenced. (Trial in progress on Feb.
16, 17, and 18, 1955.)

Feb. 18—Defendant cited for contempt of Court and found
guilty.

Feb. 18—Defendant sentenced to imprisonment for six (6)
months.

Motion for stay of sentence for 10 days granted.

Defendant released on \$1,000.00 personal.

Feb. 23—Order of Cancellation filed and entered.

Feb. 28—Notice of Appeal filed.

July 28—File mailed to C. C. A.

2

In United States District Court for the
Eastern District

Complaint to cancel citizenship

Filed Apr. 24, 1953

The United States of America, by Kenneth W. Smith, Assistant United States Attorney for the Eastern District of Michigan, herewith presents its complaint under and pursuant to Section 340 (a) of the Immigration and Nationality Act (66 Stat. 260; 8 U. S. C. A. 1451 (a)) against Stefena Brown, and respectfully represents:

1. That the said Stefena Brown was, prior to November 25, 1946, an alien, a native and citizen of Poland;

2. That the said Stefena Brown entered the United States on December 26, 1912, at New York, New York, under the name of Stefania Butryn and claims to have resided thereafter continuously in the United States to the date of her naturalization. She now resides in the United States and in this judicial district, her last known place of residence being 5031 Vinewood, Detroit, Michigan:

3. That on August 22, 1946, the said Stefena Brown filed Petition for Naturalization No. 219915 in the United States District Court for the Eastern District of Michigan, Southern Division, at Detroit, Michigan; that in the proceedings that led to her naturalization the said Stefena Brown alleged:

(a) On October 15, 1940, when registering as an alien pursuant to the Alien Registration Act of 1940, made the following statements under oath:

"10. I am, or have been within the past 5 years, or intend to be engaged in the following activities: In addition to other information, list memberships or activities in clubs, organizations or societies. None."

* * * * *

3. "15. Within the past 5 years I *have not* been affiliated with or active in (a member of, official of, a worker for) organizations, devoted in whole or in part to influencing or furthering the political activities, public relations, or public policy of a foreign government."

(b) On August 22, 1946, in testifying before naturalization examiners and executing her petition for naturalization, alleged under oath:

"It is my intention in good faith to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, State or sovereignty of whom or which I am at this time a subject or citizen * * *."

"I am not, and have not been for the period of at least 10 years immediately preceding the date of this petition * * * a believer in the unlawful damage, injury, or destruction of property, or sabotage; nor a disbeliever in or opposed to organized government; nor a member of or affiliated with any organization or body of persons teaching disbelief in or opposition to organized government. * * *

I am, and have been during all of the periods required by law, attached to the principles of the Constitution of the

United States and well disposed to the good order and happiness of the United States."

(c) On August 22, 1946, when testifying before a naturalization examiner, alleged under oath that she had never been a member of the Communist Party.

4. That on November 25, 1946, the said Stefena Brown took an oath of allegiance to the United States in open court, which reads as follows:

"I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I take this obligation freely without any mental reservation or purpose of evasion: So help me God."

Whereupon, the United States District Court for the Eastern District of Michigan, at Detroit, Michigan, relying upon the truth and good faith of the representations made by the said Stefena Brown in her petition for citizenship, and other naturalization forms required of a petitioner for naturalization, and in her oral testimony before the Naturalization Examiner, granted the prayer in her petition and entered its order admitting her to citizenship of the United States, and thereupon Certificate of Naturalization 6686059 was issued to her by the Clerk of the Court:

5. That the representations aforesaid made by the said Stefena Brown in her Petition for Citizenship and other naturalization forms required of a petitioner for naturalization, and before the Naturalization Examiner, as well as the oath to which she swore in open court were false and untrue, and at the time of making said representations and taking said oath the said Stefena Brown knew that they were false and untrue, in that the said Stefena Brown had been a member of a Communist Party of the United States and the Young Communist League, from 1933 to at least February 1937; that the Communist Party of the United States and the Young Communist League, during the period that said Stefena Brown was a member were organizations that:

(a) Advised, advocated or taught the overthrow by force or violence of the government of the United States:

5 (b) Advised, advocated or taught the duty, necessity or propriety of the unlawful assaulting or killing of any officer or officers of the government of the United States because of his or their official character;

(c) Advised, advocated or taught the unlawful damage, injury or destruction of property;

(d) Advised, advocated or taught sabotage;

(e) Wrote, circulated, distributed, printed, published or displayed, or caused to be written, circulated, distributed, printed, published or displayed, or had in its possession for the purpose of circulation, distribution, publication, issuance or display, written and printed matter which advised, advocated or taught the performance of the acts described in the subparagraphs immediately preceding and numbered (a), (b), (c), and (d);

(f) Promoted, influenced and advanced the political activities, public relations and public policy of the Union of Soviet Socialist Republics;

6. That at all times above mentioned the Young Communist League was the youth section of the Communist Party of the United States, and the Communist Party of the United States was a section of an international organization whose principal officers were citizens or subjects of foreign countries and the principal offices of which were situated in Moscow, in the Union of Soviet Socialist Republics; that decisions made by such organization were binding upon other Communist Parties, including the Communist Party of the United States and the Young Communist League and the individual members thereof, whether such decisions were contrary to the laws of the United States or not;

7. That the said Stefena Brown deliberately and intentionally made false statements and concealed the true facts in the course of her naturalization proceedings, as set forth in the preceding

6 paragraphs, in order to prevent the making of a full and proper investigation of her qualifications for citizenship;

to conceal her lack of attachment to the principles of the Constitution; to induce the naturalization examiner to make an unconditional recommendation to the court that her petition be granted; to preclude inquiry by the court concerning her qualifications for citizenship; and to procure naturalization in violation of law;

8. That the Assistant United States Attorney institutes this proceeding upon the certificate of Maurice A. Roberts, Attorney for

the United States Immigration and Naturalization Service, showing good cause therefor, which affidavit is attached hereto and made a part hereof;

9. That the said order of admission to citizenship and certificate of naturalization for said Stefena Brown were procured by concealment of material facts and by wilful misrepresentation, in that:

(a) She was not a person of good moral character during the period required by law, inasmuch as she had made false statements in the proceedings leading up to her naturalization, as more particularly set out in paragraph 3 (Sec. 707 (a), USC Title 8);

(b) That she was not attached to the principles of the Constitution and well disposed to the good order and happiness of the United States during the period required by law, inasmuch as she had been a member of the Communist Party of the United States and the Young Communist League organizations, which to her knowledge had engaged in activities set forth in paragraph 5 (Sec. 707 (a), USC Title 8);

(c) That her naturalization was prohibited by Sec. 305 of the Nationality Act of 1940, in that she had been a member of the Communist Party and the Young Communist League during the period of ten years immediately preceding the filing of her petition, such organizations having engaged in activities prescribed by statute (Sec. 705, USC Title 8);

7 (d) That she did not intend in good faith to support the Constitution of the United States, to renounce and abjure, absolutely and entirely, all allegiance and fidelity to any foreign state or sovereignty and to bear true faith and allegiance to the United States, inasmuch as she intended to and did retain allegiance to the Communist International and to another foreign sovereignty (Sec. 735, USC Title 8);

Whereupon, plaintiff prays that an order be entered in this cause revoking and setting aside the order heretofore entered admitting the said Stefena Brown to citizenship upon Petition No. 219915 of the United States District Court for the Eastern District of Michigan, Southern Division, at Detroit, Michigan, and cancelling Certificate of Naturalization No. 6686059, heretofore issued to said Stefena Brown on the grounds that it was procured by

concealment of material facts and wilful misrepresentation; and further ordering that the Certificate of Naturalization shall be delivered and surrendered to the Clerk of the United States District Court for the Eastern District of Michigan, and transmitted by him to the Commissioner of Immigration and Naturalization, Washington, D. C., and that the Clerk of this Court forthwith transmit a certified copy of this order to the Commissioner of Immigration and Naturalization, Washington, D. C., and that said Stefena Brown be forever restrained and enjoined from claiming any right, privilege, benefit or advantage whatsoever under said Certificate of Naturalization and for such other and further relief as may be proper.

KENNETH W. SMITH,

Assistant United States Attorney.

April —, 1953.

8

Affidavit in Support of Complaint

C-6686059-T

UNITED STATES OF AMERICA,

District of Columbia, ss:

Maurice A. Roberts, being duly sworn, deposes and says:

1. That he is an Attorney, Immigration and Naturalization Service, United States Department of Justice; and as such has access to the official records of the said Service, from which the following facts appear:

(a) That Stefena Brown (also known as Sally Brown and Sally Butryn) filed a petition for naturalization in the United States District Court at Detroit, Michigan on August 22, 1946 and was admitted to citizenship by that court on November 25, 1946, receiving naturalization certificate No. 6686059.

(b) That in the proceedings which led to her naturalization, the said Stefena Brown

(I) On October 15, 1940, when registering as an alien pursuant to the Alien Registration Act of 1940, made the following statements under oath:

"10. I am, or have been within the past 5 years, or intend to be engaged in the following activities: In addition to other information, list memberships or activities in clubs, organizations or societies. None."

*

*

*

*

*

"15. Within the past 5 years I *have not* been affiliated with or active in (a member of, official of, a worker for) organizations, devoted in whole or in part to influencing or furthering the political activities, public relations, or public policy of a foreign government."

(II) On August 22, 1946, in testifying before naturalization examiners and executing her petition for naturalization, alleged under oath:

9 "It is my intention in good faith to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, State or sovereignty of whom or which I am at this time a subject or citizen. * * *

"I am not, and have not been for the period of at least 10 years immediately preceding the date of this petition * * * a believer in the unlawful damage, injury, or destruction of property, or sabotage; nor a disbeliever in or opposed to organized government; nor a member of or affiliated with any organization or body of persons teaching disbelief in or opposition to organized government * * * I am, and have been during all of the periods required by law, attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States."

(III) On August 22, 1946, when testifying before a naturalization examiner, alleged under oath that she had never been a member of the Communist Party.

(c) That all of the allegations of said Stefena Brown, as set forth in the preceding subparagraph, were false and untrue as more particularly appears hereinafter.

(d) That the said Stefena Brown was a member of the Communist Party and the Young Communist League from 1933 to at least February, 1937.

(e) That the Communist Party and Young Communist League were organizations which during the period of the said Stefena Brown's membership therein:

I. Advised, advocated or taught the overthrow by force or violence of the government of the United States;

II. Advised, advocated or taught the duty, necessity or propriety of the unlawful assaulting or killing of any officer or officers of the government of the United States because of his or their official character;

III. Advised, advocated or taught the unlawful damage, injury or destruction of property;

IV. Advised, advocated or taught sabotage;

10 V. Wrote, circulated, distributed, printed, published or displayed, or caused to be written, circulated, distributed, printed, published or displayed, or had in its possession for the purpose of circulation, distribution, publication, issuance or display, written and printed matter which advised, advocated or taught the performance of the acts described in the subparagraphs immediately preceding and numbered I, II, III, and IV.

VI. Promoted, influenced and advanced the political activities, public relations and public policy of the Union of Soviet Socialist Republics.

(f) That at all of the times above mentioned, the Communist Party and Young Communist League were sections of an international organization whose principal officers were citizens or subjects of foreign countries and the principal offices of which were situated in Moscow, in the Union of Soviet Socialist Republics; that decisions made by such organization were binding upon other Communist Parties, including the Communist Party of the United States and the Young Communist League and the individual members thereof, whether such decisions were contrary to the laws of the United States or not.

(g) That the said Stefena Brown deliberately and intentionally made false statements in the proceedings leading up to her naturalization, as set forth in the preceding subparagraphs, in order to prevent the making of a full and proper investigation of her qualifications for citizenship; to conceal her lack of attachment to the principles of the Constitution; to induce the Immigration and Naturalization Service to make an unconditional recommendation to the court that her petition be granted; to preclude inquiry by the court concerning her qualifications for citizenship; and to procure naturalization in violation of law.

2. That the naturalization of the said Stefena Brown was fraudulently and illegally procured in that:

(a) She was not a person of good moral character during the period required by law inasmuch as she had made false statements in the proceedings leading up to her naturalization, as more particularly set forth in paragraph 1.

(b). She was not attached to the principles of the Constitution and well disposed to the good order and happiness of the United States during the period required by law inasmuch as she had been a member of the Communist Party and Young Communist League, organizations which to her knowledge had engaged in the activities set forth in subparagraph 1 (e).

(c) Her naturalization was prohibited by Section 305 of the Nationality Act of 1940, in that she had been a member of the Communist Party and the Young Communist League during the period of ten years immediately preceding the filing of her petition, such organizations having engaged in activities proscribed by the statute.

(d) She deliberately and intentionally made false statements in the proceedings leading up to her naturalization concerning her membership in the Communist Party and the Young Communist League, as more particularly set forth in paragraph 1; and that such false testimony was given by her for the purposes set forth in subparagraph 1 (g).

(e) She did not intend in good faith to support the Constitution of the United States, to renounce and abjure absolutely and entirely all allegiance and fidelity to any foreign state or sovereignty, and to bear true faith and allegiance to the United States, inasmuch as she intended to and did retain allegiance to the Communist International and the Union of Soviet Socialist Republics.

3. That good cause exists for the institution of a suit under Section 338 (a) of the Nationality Act of 1940, (8 U. S. C. 738 (a)) to set aside and cancel the naturalization of said Stefena Brown as having been fraudulently and illegally procured.

4. That the last known place of residence of said Stefena Brown is 5031 Vinewood, Detroit, Michigan.

(Signed) MAURICE A. ROBERTS,

Attorney.

Subscribed and sworn to at Washington in the District of Columbia this 20th day of August, 1952, before me, the Assistant General Counsel of the Immigration and Naturalization Service, United States Department of Justice, authorized by Section 60.26 of Title 8 of the Code of Federal Regulations to administer oaths.

(Signed) ALBERT E. REITZEL,

Assistant General Counsel.

In United States District Court

Answer

Filed Sept. 9, 1953

Now comes Stefena Brown, by her attorney, Harold Norris, and by way of Answer to Plaintiff's Complaint, shows unto this Honorable Court as follows:

1. Answering paragraph 1, defendant admits the allegations therein.

2. Answering paragraph 2, defendant admits the allegations therein.

3. Answering paragraph 3, defendant admits that on or about October 15, 1949, defendant did give certain answers to such questions as stated in paragraph 3 (a) of the Plaintiff's Bill of Complaint; that defendant admits the allegations as set forth in paragraph 3 (b) of Plaintiff's Complaint; that defendant denies the allegations as set forth in paragraph 3 (c) of Plaintiff's Complaint.

4. Answering paragraph 4, defendant admits the allegations contained therein, but has no information as to what factors the United States District Court for the Eastern District of Michigan, Southern Division relied on in admitting her to citizenship and leaves plaintiff to its proofs.

5. Answering paragraph 5, the defendant denies that any statements made by her were false or, if by chance, any of her statements were false, then they were made without knowledge that they were false; defendant denies knowledge as to the truth of the allegations stated in paragraph 5, concerning the character, activities, aims, policy and control of the Communist Party and leaves plaintiff to its proofs, and further, defendant denies that she was familiar with and approved of the alleged activities, aims, and teachings of the Communist Party as set forth in said Paragraph 5.

6. Answering paragraph 6, defendant not having sufficient knowledge with which to answer, leaves plaintiff to its proofs.

7. Answering paragraph 7, defendant denies the allegations made therein.

8. Answering paragraph 8, defendant denies that there is good cause for instituting these proceedings.

9. Answering paragraph 9, defendant denies that the Order of Admission to Citizenship and Certificate of Naturalization

issued to her were fraudulently and illegally procured and claims that she is a person of good moral character attached to the principles of the Constitution and well disposed to the good order and happiness of the United States.

Wherefore, defendant prays that these proceedings be dismissed and for such other and further relief as may be proper.

(Sgd.) Harold Norris,

HAROLD NORRIS,

Attorney for Defendant, 946 Penobscot Building,

Detroit 26, Michigan. Woodward 1-1216.

Dated: Detroit, Michigan, August 31, 1953.

14 *Excerpts from transcript of testimony*

* * * * *

(Excerpts from the testimony of Stefena Brown, upon the trial of the above-entitled cause before the Honorable Ralph M. Freeman, District Judge, at Detroit, Michigan, commencing on February 15, 1955.)

Appearances:

Dwight K. Hamborsky, Esq., Assistant U. S. Attorney, appearing on behalf of the United States.

Harold Norris, Esq., appearing on behalf of the Defendant.

STEFENA BROWN, the defendant herein, called as a witness under the statute, by the Government, for cross-examination, and having been first duly sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid, testified as follows:

Cross-examination by Mr. HAMBORSKY:

Q. Would you repeat for the court at this time your name?

A. Stefena Brown.

* * * * *

Q. Did you ever pay any Communist Party dues during the period prior to 1946?

15 A. No.

Q. You were never a member of the Communist Party at any time prior to 1946; that is your testimony, isn't it?

A. That is right.

Q. Never a member of the Communist Party prior to 1946.

A. No.

Q. Did you ever collect any dues for the Communist Party?

A. No—just a minute; you said did I collect dues for what?

Q. For the Communist Party.

A. How can I collect when I didn't belong?

The COURT. You answer the questions. You are here to answer questions, not to ask them.

By Mr. HAMBORSKY:

Q. Do you know a Virgil Stewart?

A. No.

Q. Do you know a person by the name of William Nowell?

A. Yes.

Q. Do you know Bernice Baldwin?

A. No.

Q. Do you know Earl Reno?

A. Yes, he is the one who left his wife with three children.

Mr. HAMBORSKY. I will ask that the latter be stricken out as not responsive.

The COURT. Yes, I think it may be stricken out as not responsive.

By Mr. HAMBORSKY:

Q. Do you know Barry Cody?

16 Mr. NORRIS. In terms of that time question, does this apply?

Mr. HAMBORSKY. Yes, this applies in terms of the time question, prior to '46.

A. Well, I refuse to answer on the Fifth Amendment.

The COURT. What was that question again? I will ask the reporter to read that question.

(The question was read by the reporter.)

The COURT. Barry Cody? Barry C-o-d-y, is that right?

Mr. HAMBORSKY. Right.

(The answer was repeated by the reporter.)

Mr. HAMBORSKY. I contend that is contempt of court, your Honor. She cannot refuse to answer on the Fifth Amendment.

Mr. NORRIS. The question refers to the period any time before 1946?

Mr. HAMBORSKY. Correct.

Mr. NORRIS. Did you understand that, witness?

A. Yes, but I mean, do I know him before—

Mr. NORRIS. Before 1946.

A. Before 1946? I didn't know him—I don't know him in 1946.

By Mr. HAMBORSKY:

Q. Well then, you are now changing your answer?

A. Yes, I am changing my answer.

Q. You are changing your answer to "no," you did not know him before 1946?

17 A. (Witness nods in the affirmative.)

Q. You are positive about that?

A. Yes.

* * * * *

Q. Do you know whether your husband, William Brown, was ever a member of the Communist party?

Mr. NORRIS. If your Honor please, I want to object to that question. I think what we are talking about is with reference to the illegality in relation to her application, and how it related to her naturalization. Now I believe there is a question here raised with regard to her husband, and it involves the privilege, as well as the question of whether it is material. I believe on those two points, they are ground for the objection.

The COURT. I think she may answer.

A. Well, I refuse to answer. In the first place, I don't know just how to say it; but in the first place, a wife don't have to testify against her husband. Which way would you put it? I can't seem to get that straight.

Mr. NORRIS. I just raise the question that what I think the witness has in mind is that by answering that question, whether or not it gets into the area of privilege, and whether or not she would be required to testify against her husband in any fashion.

* * * * *

The COURT. The question was what? What was your question again?

Mr. HAMBORSKY. Will you read the question?

18 (The question was repeated by the reporter.)

A. I still think I don't want to answer the question.

The COURT. Why?

A. I don't think it is fair to put a wife in the position to answer for her husband. I just refuse to answer it.

The COURT. Well, there is nothing—

A. (Interposing.) In the first place, I understand one thing, but it is about me, and it is not about him, and you have no right to ask me about my husband, and I don't intend to answer that question. I don't think it is right.

The COURT. Well, you are basing your refusal to answer on privilege, on the privilege that is supposed to exist, a legal privilege, between husband and wife?

A. That is right.

The COURT. I do not see how that is a privileged communication.

A. I just don't see it.

The COURT. Just a minute. On what theory is that a privileged communication here in this suit?

(The court heard legal argument of counsel.)

* * * *

The COURT. The question is whether she could testify in some adversary proceeding involving her husband. I can not see where privilege would attach here, where she is the one on trial.

I think I will direct the witness to answer. Answer the
19 question.

A. Would you repeat that again?

Mr. HAMBORSKY. Read it back, so that there is no change of wording.

(The question was repeated by the reporter.)

A. When?

The COURT. Before 1946?

Mr. NORRIS. If your Honor please, I wonder if I may ask the indulgence of the court for a few minutes recess on this?

The COURT. All right. We will take our afternoon recess now.
(Short recess taken.)

The WITNESS. First, I would like to make apology. You know, this is a ticklish problem, to answer about your husband. Maybe I didn't know the right word. But I didn't mean to be that way.

The COURT. That is all right. Do you want to answer the question?

A. Well, I guess I have to answer the question.

The COURT. What is your answer?

A. Well, my husband got out at the same time from the party when I did from the YCL.

The COURT. I do not think that answers the question.

Mr. HAMBORSKY. No, that is not an answer to the question.

The COURT. Will you read the question again to the
20 witness?

(The question was repeated by the reporter.)

The COURT. You may answer that yes or no.

A. Yes.

The COURT. She does remember, she says. That is the answer.

The COURT. I will permit you to advise her of her rights, and we will see what happens.

Mr. NORRIS. Yes, your Honor. With the court's permission, I want to take this opportunity to state that you may, if you so choose, exercise your right to refuse to answer that question, under the Fifth Amendment to the Federal Constitution, on the ground that it may tend to incriminate you.

The COURT. You understood what your attorney said?

A. Yes.

The COURT. All right. Now, there is a question before you.

A. Would you please repeat that?

The COURT. Read the question. Re-state the question.

Mr. HAMBORSKY. Yes.

Q. Were you ever a member of the Communist party from the date of your naturalization, November 1946, until January 1, 1950?

A. Pardon me, but I don't think you said it that way as you are saying it now.

21 Q. I am asking you that now.

The COURT. Do you understand the question.

A. Yes, but I —

The COURT. All right; if you understand it?

A. I refuse to answer, on the Fifth Amendment.

By Mr. HAMBORSKY:

Q. On the ground that the answer that you would give would tend to incriminate you, is that what you are saying?

A. Yes.

Mr. NORRIS. Well, just a minute.

Q. And do you know that the answer that you would give would tend to incriminate you?

Mr. NORRIS. We are getting into a legal area now, as to what would tend to incriminate her. * * * I think the language of the decisions is that it is a legal question for the court to decide as to whether or not it is proper to invoke it.

The COURT. Is there an objection?

Mr. NORRIS. Yes, I object.

The COURT. I sustain the objection.

Q. Did you ever at any time pay Communist party dues to Bernice Baldwin?

A. May I say something? I don't even know Bernice Baldwin, whoever she is.

The COURT. What is that?

A. I don't even know her.

By Mr. HAMBORSKY:

Q. Can you answer the question?

22 The COURT. Will you read the question, please.

(The question was repeated by the reporter.)

A. I don't know how to answer this question.

The COURT. Why don't you know how to answer it?

A. The only thing, I could say no.

By Mr. HAMBORSKY:

Q. Did you ever belong to the McGraw Communist Club?

The COURT. Belong to what?

Mr. HAMBORSKY. The McGraw Communist Club.

A. I refuse to answer, on the Fifth Amendment.

Q. On the ground that the answer that you would give would tend to incriminate you?

A. That is right.

Q. Did you ever attend in 1948 an executive board meeting of the McGraw Communist Club held at 6580 Stanford Avenue in Detroit?

A. I refuse to answer, on the Fifth Amendment.

Mr. HAMBORSKY. Because I feel that there will probably be a series of these questions, your Honor, so that the answer is clear each time, she refuses to answer on the ground that the answer that you would give would tend to incriminate you?

A. That is right.

Q. All you have to do is to tell me "Fifth Amendment."

A. All right.

Q. And that will be your answer.

A. All right, thank you.

23 The COURT. When you refuse to answer, that will be because the answer might tend to incriminate you, is that right?

A. That is right. I will just say "Fifth Amendment".

Mr. HAMBORSKY. All right.

The COURT. Unless you specify otherwise?

A. Yes.

The COURT. All right.

By Mr. HAMBORSKY:

Q. At this meeting in 1948, were you appointed to represent the McGraw Communist Club at the Marxist School?

A. Fifth Amendment.

Q. How many executive board meetings of the McGraw Communist Club did you attend in 1948?

A. Fifth Amendment.

Q. How many members of the Communist party did you recruit into the McGraw Communist Club in 1948?

A. Fifth Amendment.

Q. Did you ever have an executive board meeting of the McGraw Communist Club at your home on Vinewood in Detroit?

A. The Fifth Amendment.

Q. How many Communist party meetings did you hold at your home, prior to 1950, in Detroit?

A. Fifth Amendment.

Q. Now, I will ask you a series of questions—and this is directed at clearing up some of the problems that we faced yesterday: When did you first meet Carl Winter?

24 Mr. NORRIS. I believe the question yesterday was in regard to the date of before or after 1946?

Mr. HAMBORSKY. I thought all of her answers referred to prior to 1946, and she corrected me; and instead of asking her now if she met them, she has testified now that she has met them and knows these people. All I want to know is when she met them, what year. I thought that would be an easy way to clear it up, because that her answers were prior to 1946.

The COURT. I think she may answer the question.

Mr. NORRIS. Well, if I may, your Honor, I would like to ask the court's permission to indicate to the witness that if she wishes to exercise that right under the Fifth Amendment, that she could.

The COURT. All right.

Mr. NORRIS. I would, with the court's permission, say this: Witness, I want to advise you that, as in previous circumstances, you may, if you so desire, exercise your right to refuse to answer that question under the Fifth Amendment to the Constitution, on the ground that it may tend to incriminate you.

The COURT. All right, now, what is the question?

By Mr. HAMBORSKY:

Q. When did you first meet Carl Winter?

A. The Fifth Amendment.

The COURT. The Court is of the opinion that the Blau case, the authority of that case, would entitle the witness not to answer.

Mr. HAMBORSKY. I will leave it this way, your Honor. I was under the impression that she answered the question, and she understood the question as presented, and that her answer stands on the record. And if Mr. Norris wants to do something about it, I will not inquire any further along those lines. I will let the record stand as it is.

The COURT. All right.

The COURT. You instructed the witness that she might claim her constitutional privilege under the Fifth Amendment; and she did claim it, I think. And I sustained the witness in exercising her privilege, claiming her rights.

By Mr. HAMBORSKY:

Q. Do you know what the Michigan School of Social Science is?

A. No.

Q. What is the answer?

A. I don't know.

Q. Isn't it true that in 1948 you were in attendance at the Michigan School of Social Science?

A. I refuse to answer on the Fifth Amendment.

Q. Did you ever attend, in 1949, the Michigan School of Social Science here in Detroit, as a student?

A. I refuse to answer, on the Fifth Amendment.

26 Q. Isn't it true that you attended that school from early 1949 until the latter part of 1950?

A. Fifth Amendment.

Q. Isn't it true that the Michigan School of Social Science is a school conducted and run by the Communist party of the United States?

A. Fifth Amendment.

Q. Isn't it true that you were a member of the Communist Party at the time that you were granted naturalization, November, 1946.

A. To the best of my knowledge I was not.

Q. Aren't you sure about it?

A. Yes, I am sure about it.

Q. Well then, the answer is that in November 1946, you were not a member of the Communist Party?

A. Yes.

Q. Is that your answer?

A. Yes.

Mr. HAMBORSKY. You may cross-examine.

Mr. NORRIS. If your Honor please, this is all examination under the statute, and I want to reserve the right to go into the matter with this witness. I won't cross-examine the witness at this point. I will put her on on direct.

The COURT. All right. That is all now.

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Mr. HAMBORSKY. That is the Government's case, your Honor.
The COURT. All right.

Mr. NORRIS. I would like to call Mrs. Stefena Brown.

The COURT. All right.

MRS. STEFENA BROWN, the defendant herein, was there-upon called as a witness in her own behalf, and having been previously duly sworn, testified as follows:

The COURT. Let the record show that Mrs. Brown has been previously sworn as a witness, and has already testified in this case. It will be not necessary to swear her as a witness again.

Mr. HAMBORSKY. So that the record will be straight, she is now testifying as a defense witness, is that right?

The COURT. Yes, I think that is right, is it not, Mr. Norris?

Mr. NORRIS. That is right, your Honor.

The COURT. You are calling her now as your witness?

Mr. NORRIS. That is right, your Honor.

The COURT. All right.

28 Mr. NORRIS. The plaintiff has rested.

Direct examination by Mr. NORRIS:

Q. Your full name is Stefena Brown?

A. That is right.

Q. Your address?

A. 5031 Vinewood.

Q. What is your occupation?

A. Waitress.

Q. And how old are you, Mrs. Brown?

A. Forty-four.

The COURT. Forty-four?

A. That is right.

Q. You testified that you were about two years old when you were brought to the United States, is that right?

A. That is right.

Q. And you have been in the United States at all times since that time?

A. That is right.

Q. How far did you go in school, Mrs. Brown?

A. The seventh grade.

Q. You have been to the seventh grade?

A. Yes, that is right.

Q. And when did you first begin to work?

A. When I was 15.

29 Q. Were you ever a member of the Young Communist League?

A. Yes, I was.

Q. From what time did your membership in the Young Communist League begin, to the best of your recollection?

A. It began in depression time, when people were unemployed.

Q. And that was when, in terms of years, if you recall?

A. Oh, I believe in 1929 and 1930.

Q. When did you begin to become a member of the Young Communist League?

A. I believe it was around 1929 and 1930.

Q. Well, could you give us the time, approximately?

A. I would say in the early '30s.

Q. In the early '30s?

A. That is right.

Mr. HAMBORSKY. What was that last?

The COURT. In the early '30s, she said.

Mr. NORRIS. The early '30s.

The COURT. Did she say the early '30s, or early in 1930?

Mr. HAMBORSKY. I have got "'29 or '30;" and now I have got "early '30s".

Mr. NORRIS. I was trying to make it more specific.

The COURT. I didn't get the answer either. Was your answer the early '30s, or early in 1930?

A. Well, 1930.

The COURT. All right.

30 — The WITNESS. Did it sound like my age?

The COURT. What is that?

The WITNESS. Did it sound like my age?

By Mr. NORRIS:

Q: When did you end being a member of the Young Communist League?

A. In '35, about the first of the month, 1935, in the first of the month.

Q. Just what do you mean, the first of the month in 1935?

A. Well, that is when I stopped all activities.

The COURT. He means what month are you talking about?

A. January.

By Mr. NORRIS:

Q. January of nineteen thirty and five?

A. Yes.

The COURT. All right.

By Mr. NORRIS:

Q. Now, between 1930 and the first month in 1935, what did your activities consist of, in the main, while you were a member of the Young Communist League?

A. As I could remember, it was unemployment insurance. When people were hungry, I seen that they were taken care of, helping them get relief. And then when they were thrown out of the house, I tried to help them see that they would have a home to live in. That was my way of working in the Young Communist League.

Q. Other than the period from 1930 through the first month of 1935, did you engage in any Communist activity of any kind?

A. Would you repeat that?

31 — Q. I have not finished my question.

The COURT. She asked you to repeat it. She did not hear the first part of it. Start over again.

By Mr. NORRIS:

Q. Other than the period from 1930, through the first month of 1935, did you engage in any Communist Party or Young Communist Party activity at any time, prior to 1946, when you were naturalized?

A. From 1935?

Q. Outside of the period after 1935, January 1935, and then until 1946, did you engage in any activity—

A. No I haven't. And my reason was I had to look after myself.

Mr. HAMBORSKY. Your Honor, I know that I cannot object as being not responsive, but on the other hand, I think, to protect the record, she has answered the question; and what she is doing now is just elaborating.

The Court. I think she has probably answered the question.

By Mr. NORRIS:

Q. Now, what were the reasons that you ended your Communist activity with the Young Communist League, in January of 1935?

A. Maybe because—it was because I was hungry, and unemployed, and I had to look after myself.

Q. Well, when were you married?

A. I was married in 1934, January 8.

Q. January 8, 1934?

32 A. Yes.

Q. Is that right?

A. Yes, that is right.

Q. And where were you married?

A. Pontiac, Michigan.

Q. Were you living in Pontiac, Michigan, at the time?

A. At the time I lived there, six months before I was married, and I lived one month after, after I was married.

Q. You were married on January 8, 1934, is that right?

A. That is right.

Q. And for six months before that time you were living in Pontiac, Michigan?

A. Yes.

Q. And then for about one month afterwards?

A. That is right.

Q. And then you returned to Detroit?

A. That is right.

Q. In other words, between January 1934 and January 1935 — at January 31, 1935, you discontinued any activity in the Young Communist League and any Communist activity, is that right?

A. Yes, that is right.

Q. Did your husband likewise discontinue any Communist activity during that same period?

A. He has. He has been expelled.

Q. You say he was expelled?

33 A. Yes.

Q. From the Communist Party?

A. That is right.

Q. To the best of your recollection, when did that occur?

A. In January, in the first of January of 1935—I mean as far as—yes, 1935, in January.

The Court. I didn't quite get that. You are talking now about your husband?

A. That is right.

The Court. You say he was expelled?

A. That is right.

The Court. And when?

A. In 1935, the first of the month.

The Court. Expelled as a member of the Communist Party?

A. That is right. And he never been in the Communist Party since then.

By Mr. Norris:

Q. How do you know he was expelled?

A. We received a letter.

Q. What did that letter say, to the best of your recollection?

A. That he was—

Mr. HAMBORSKY. Well, I object to that. I think the best evidence is the letter.

The Court. If the letter is available, it would be. Do you have the letter?

34 Mr. NORRIS. No, we do not have it. I believe she could testify for whatever it is worth.

The Court. I will sustain the objection, on the showing not made now, that the letter would be the best evidence, if it is available.

Mr. NORRIS. Well, I will put it this way: The reason you state to this court that your husband was expelled was because you received word, in the form of a letter, of that expulsion, is that right?

A. That is right.

Q. I won't ask any further questions about that. After you were married in 1934, or 1935, were you unemployed at any time?

A. Yes.

Q. And what did you do to earn a living?

A. Well, when I remember, I did get a job; they were hiring at Ternstedt's and I worked there a couple of months, and I got laid off.

Q. Did you have difficulty securing employment?

A. Yes, I did.

Q. You completed an alien registration form. What was the date of that?

Mr. HAMBOURSKY. In about 1940, and that looks like it.

By Mr. NORRIS:

Q. On or about October 15, 1940, you completed an alien registration form, is that right?

A. That is right.

Mr. NORRIS. It has been introduced here.

Q. (Continuing.) And in that form you stated as follows:

"I am or have been, within the past five years, or intend to be engaged in the following activities. In addition to other information, list memberships or activities, club organizations, or societies." And you answered "None." And that was the answer that you gave at that time, is that right?

A. That is correct.

Q. Was that a true answer?

A. That was a true answer.

Q. You also stated, to question 15 on that form, "Within the past five years, I have not been affiliated with or active in (a member of, official of, a worker for) organizations devoted in whole or in part to influencing or furthering the political activities, public relations, or public policy of a foreign government." Was that a true answer given to that question?

A. That was a true answer.

Q. Now, on or about July 16, 1946, did you fill out a form called "Application for Certificate of Arrival, and Preliminary Form for Petition for Naturalization"?

A. Yes, sir.

Mr. HAMBOURSKY. I think that is Exhibit 1.

Mr. NORRIS. Yes, I believe that is Exhibit 1.

Q. And the Government had shown you this form before, and you identified your signature here, is that right?

A. Yes, I have.

Q. As Question 23 in that application, we find the wording:
 "Do you fully believe in the form of government of the
 36 United States?" And you gave the answer "Yes"?

A. Yes.

Q. Was that a true answer?

A. That was a true answer.

Q. What did you understand was the meaning of "form of gov-
 ernment of the United States"?

A. The form of government, the way I see it is, that you defend
 your government. You are the people of this government, and
 fight, if it is necessary, for your country.

Q. You also were asked Question No. 25: "Have you read the
 following Oath of Allegiance?" And you answered "Yes."

A. Yes, I have.

Q. The oath reads as follows:

"I hereby declare on oath that I absolutely and entirely renounce
 and abjure all allegiance and fidelity to any foreign prince, po-
 tentate, state or sovereignty, of whom or of which I have hereto-
 fore been a subject or a citizen; that I will support and defend the
 Constitution and laws of the United States of America, against
 all enemies, foreign and domestic, and that I will bear true faith
 and allegiance to the same; that I take this obligation freely,
 without any mental reservation or purpose of evasion. So help
 me God!"

Now, did you willingly take that oath?

A. Yes.

Q. And did you take that oath without mental reserva-
 37 tion or purpose of evasion?

A. What?

Q. Did you have any mental reservation, or did you take that
 oath with any thought in mind of evading that oath?

A. No, I never did. I never considered myself anything else
 but American. How can I consider, when I was only two years
 old? What does another country mean to me? I don't know any
 other country.

Mr. HAMBORSKY. I think she has answered it, and I move the
 answer be stricken.

The Court. I think she has answered it.

By Mr. NORRIS:

Q. Question No. 26: "If necessary, I am willing to take up arms

in defense of this country?" And you answered that question "Yes." Was that a true answer to that question?

A. That was very true.

Q. Are you willing to take up arms in defense of this country, in the event of any hostility between the United States and Russia?

A. Yes.

Q. Regardless of whatever the reason may be for any hostility between the government of the United States and the Government of Russia?

A. That is correct.

Q. In Question 28 you were asked: "Are you a believer in anarchy, or the unlawful damage, injury or destruction of property, or of sabotage"? And you answered "No."

Was that a true answer to that question?

A. That was a true answer.

38 Q. You say it was not only a true answer at the time you filed the petition, July 16, 1946, and is that the true answer today?

A. It is true. It was a perfectly true answer to that question. I never believed in overthrowing anything. I believe in fighting for this country. I like this country. I never told anybody I didn't.

Q. Did you ever teach or advocate anarchy or overthrow of the existing government in this country?

A. Teach?

Q. Did you ever teach the idea that we ought to overthrow the government of the United States?

A. No, I never did.

Q. Did you ever advocate that?

A. No.

Q. Did you ever say that we should?

A. No, I never did.

Q. To your knowledge, did you ever belong to any organization that taught or advocated anarchy or the overthrow of the existing government in this country?

A. No. As much as I know, I didn't belong, to destroy the country. I believe in helping the country, and helping the people. That was my life of living, not destroying the things that the people put up.

Q. Are you attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States?

A. That, I am.

39 Q. What do you understand by that? What do you understand by those words "attached to the principles of the Constitution"?

A. The way I understand this, when my country needs me, I fight for it and do what is right among the people.

Q. Now, in your petition for naturalization, which is Government's Exhibit No. 2, and is dated August 22, 1946, you stated the following:

"I am not and have not been for a period of at least ten years immediately preceding the date of this petition, an anarchist nor a believer in the unlawful damage, industry or destruction of property or sabotage, nor a disbeliever or opposed to organized government, nor a member of or affiliated with any organization or body of persons teaching belief in or opposition to organized government."

Now, when you made that——

Mr. HAMBORSKY. What is that section of the exhibit? What exhibit number?

Mr. NORRIS. I believe this is No. 15, Question 15, I mean, or No. 15. That is Government's Exhibit 2.

Q. Now, when you stated that as your intention, and feeling and belief, was that a true statement?

A. That was correct; I don't believe in destroying. I believe in helping.

Q. When you appeared for examination by the Inspector in regard to your petition for naturalization, you were asked certain questions, were you not, with regard to that petition?

40 A. Yes.

Q. Now, were you asked the question, on or about August 22, 1946, as to whether or not you were a member of a Communist or Fascist organization?

A. I was not. All I was asked, was, who was the President——

Mr. HAMBORSKY. Well, I think she has answered it.

The WITNESS. Well, I would like to tell what I was asked. I was only asked questions, and that was who was the President of the United States.

Mr. HAMBORSKY. Just a minute. I think you have answered the question..

The COURT. I think you have answered it.

By Mr. NORRIS:

Q. What questions were you asked, to the best of your recollection?

A. Who was the President of the United States, and will I fight for my country.

Q. And did you answer those questions?

A. Yes, I have.

Q. Now, why do you state at this time that those were the only questions that you recall being asked of you?

Mr. HAMBORSKY. Well, I will object to that as leading and suggestive.

The COURT. No, I do not think it is.

Mr. HAMBORSKY. This is direct examination now, your Honor.

41 The COURT. I know.

Mr. HAMBORSKY. I have allowed him a lot of leeway here.

The COURT. No, I do not think so. I do not think there has been any unusual leeway. I think you may proceed.

A. Well, it is just like I told you, this is the book that my Mother gave me to study; and this book, I read this for months, and it is hard for me because I am not a good reader. My husband sat up with me and helped me study this book, and studied the Constitution of the United States, and it was really a thing for me. I woke up the night before, and stayed up half the night, before I had to go and answer my questions; and it was so funny to me, that he never asked me those questions that was all in this book.

Q. Now, when you filed your application for a certificate of arrival, and preliminary form for petition for naturalization, I believe you found the question which said: "What have you done to prepare yourself for examination on the government of the United States?" And you replied, "Studied the booklet, 'How to Become a Citizen of the United States,' textbook of American citizenship."

Is that the booklet that you have there?

A. Yes, sir, right here [indicating].

Mr. NORRIS. Mark this, please.

(The book referred to was marked "Defendant's Exhibit A.")

Mr. NORRIS. If your Honor please, I offer this as Defendant's Exhibit A, in evidence.

42 The COURT. Submit it to counsel.

(Exhibit A handed to Mr. Hamborsky.)

The COURT. I think we will take a short recess. We have a jury here, ready for a jury trial to start, and I would like to get at it

just as soon as possible. If this case is going to continue much longer, I would feel obliged to continue this until maybe some later time, and proceed with that jury trial.

We will take a short recess.

(Whereupon a short recess was taken.)

Mr. NORRIS. If your Honor please, before the Court recessed, I had offered for admission Defendant's Exhibit A.

The COURT. Is there any objection?

Mr. HAMBORSKY. Your Honor, I would like to know the purpose of offering it. I do not think it is material, from what has been said, or properly identified.

The COURT. What is the purpose of it?

Mr. NORRIS. If your Honor please, there was testimony by one of the parties who acted as the inspector, I believe Mr. Austin, that he asked certain questions of this witness with regard to her petition for naturalization. There has been a denial of him asking those questions. We have a controverted question. The point is that she remembers that, because of her having in mind the questions, and information in this particular booklet, and that what she was asked did not go into this particular booklet. In other words, this is—

Mr. HAMBORSKY. Criterion of what?

43 The COURT. I will admit it.

Mr. NORRIS. It was a criterion of memory, your Honor.

The COURT. On what theory?

Mr. HAMBORSKY. On the theory that this book proves what she knows that—

The COURT. No, not that it proves, but it tends—it is some evidence to substantiate the reason that she gave for remembering that Mr. Austin did not ask. That was the theory that it is offered upon.

Mr. HAMBORSKY. All right, if that is the theory.

The COURT. That is the theory, is it not?

Mr. NORRIS. Yes, your Honor.

Mr. HAMBORSKY. And for that limited purpose. I will withdraw my objection.

The COURT. All right. How do you describe that, for the record?

Mr. NORRIS. It is Defendant's Exhibit A, and it is entitled, "American Citizenship," published by Legal Aid Bureau of the Detroit Bar Association.

The COURT. This pamphlet?

Mr. NORRIS. Yes, your Honor.

Mr. HAMBORSKY. May I say something in regard to that pamphlet? Enclosed with the pamphlet is a typewritten sheet. I do not think that is properly a part of the exhibit.

By Mr. NORRIS:

Q. Mrs. Brown, I show you this piece of paper with typewriting on it, and ask you to identify what that is?

44 A. That was found on this book of American Citizenship. This is a paper—it is a thing that is written about senators and House of Representatives, and, you know, how long—you know, it is just something that I studied from.

Q. You say this was something that you studied from?

A. Yes. I studied from that too, you know.

Q. Would it be right to say that this is just a summary of some of the information?

Mr. HAMBORSKY. Well, I will object to that.

Mr. NORRIS. I am trying to help the witness identify it. I believe I am entitled to this, your Honor.

A. Let me explain this here. This seems like it was an awful hard subject for me to remember, and I had that written out for me, so that I could try to, you know, memorize that, what is written on that. It was a very hard subject. That is what I was afraid of more than anything else in the book, you know. That was why I had it. It always has been in that book since I studied it, and I left it that way in that book, and I never took it out. You can see that. That was the hardest thing for me to memorize.

The COURT. There is no question before you now. You are just repeating over and over again. Let us get on a little bit.

By Mr. NORRIS:

Q. This is a summary of the information with regard to citizenship?

A. Yes.

Q. Is that right?

45 A. That is right.

Q. You say that was in the book, is that right?

A. Yes.

Q. And it was in the book when you obtained it, when you got it?

A. This is the thing—I had that.

Q. You had this made up?

A. Yes.

The COURT. If you offer it, offer it as a separate exhibit. Then we can find out.

Mr. NORRIS. I want to identify it.

Mr. HAMBORSKY. Let me ask a couple of questions.

The COURT. Let him mark it.

Mr. NORRIS. Mark this, please.

(The document referred to was marked "Exhibit B.")

Mr. NORRIS. That is the typewritten part that is marked.

By Mr. HAMBORSKY:

Q. Did you type this?

A. No.

Q. Who did you get it from?

A. I am not sure. I can't remember exactly who typed it. It might be that my husband had typed it for me.

The COURT. Let me ask you, is it something that you studied when you were getting ready for the examination on citizenship?

A. That is all what it is. That is all it is. It was the important questions for me to answer, and that was what I studied from.

The COURT. All right. Is there any objection?

46 Mr. HAMBORSKY. If it is offered for the same limited purposes as the other was, I have no objection.

The COURT. It is offered for that same purpose, isn't it?

Mr. NORRIS. That is right.

The COURT. It may be admitted.

Mr. NORRIS. Thank you, your Honor.

The COURT. What is that, Exhibit B?

Mr. NORRIS. Yes, your Honor.

By Mr. NORRIS:

Q. You say then, to the best of your recollection, you do not recall the question of "Are you a member, or have you been a member of a Communist or Fascist organization", being asked you at the time you filed your petition, is that right?

A. That is correct.

The COURT. You say that question was not asked of you?

A. That was not asked of me.

By Mr. NORRIS:

Q. Do you know Virgil Stewart?

A. No, I don't.

Q. Did you ever know Virgil Stewart?

A. I never seen him until the day he was in court. What was that, the first day?

Q. The first day of this trial?

A. Yes, the first day of trial, he sat there and smiled, and I smiled back at him.

Mr. HAMBORSKY. I object to that. I think that is surplusage.

47 The COURT. That is probably true. It is harmless error.

I do not mean to say that it is harmless error, but it is just not of any particular importance. However, I will let it stand.

By Mr. NORRIS:

Q. Now, did you ever attend any closed Young Communist League meetings, or any Communist meetings with Virgil Stewart being present?

A. No, I have not.

Q. You have never seen this man?

A. I have never seen that man in my life.

Q. Did you ever meet Bernice Baldwin?

A. I never met Bernice Baldwin.

Q. Did you ever attend any closed Communist meeting with Bernice Baldwin being present?

A. How could I, when I didn't even know her.

Q. And you never met her at any time?

A. Not at any time.

Mr. NORRIS. No further questions.

* * * * *

Cross-examination by Mr. HAMBORSKY:

Q. Are you now or have you ever been a member of the Communist Party of the United States?

48 A. Fifth Amendment.

Mr. HAMBORSKY. I contend, your Honor, that is in contempt of court at this time.

The COURT. Isn't that right, Mr. Norris? Now that she has taken the stand, wouldn't she waive her privilege? Wouldn't she waive any privilege of claiming any right not to answer under the Fifth Amendment?

Mr. NORRIS. No, your Honor, I do not believe that is a correct statement of the law.

The COURT. I think there is some case law on it.

(The Court heard legal argument of citation of authorities.)

The COURT. I think what I will do is this: Can you proceed with the rest of your cross-examination of this witness, and I will reserve my ruling for the time being on whether or not I will compel her to answer.

Mr. HAMBORSKY. Yes, your Honor.

The COURT. I think we will proceed with the rest of the testimony, and then I will rule on this matter.

FEBRUARY 16, 1955, 10 O'CLOCK A. M.

The COURT. The Court holds that the defendant having
49 taken the stand in her own defense, has waived the right to invoke the Fifth Amendment, and I will permit the witness to answer the question.

By Mr. HAMBORSKY:

Q. The question that I asked was: Mrs. Brown, are you now or have you ever been a member of the Communist Party?

A. The Fifth Amendment.

The COURT. I direct you to answer the question. I have already ruled on that point.

A. I am sorry, your Honor, I just cannot answer that question. I am under the Fifth Amendment. I am sorry I have to do that.

By Mr. HAMBORSKY.

Q. In other words, Witness, you are refusing to answer the question?

A. That is right.

The COURT. The Court has just ruled that you having taken the stand in this case in your own defense, by so doing you have waived the right to invoke the Fifth Amendment. And I have just informed your counsel, and you, that you must answer the question. Now, if you do not answer the question, the Court will hold you in contempt of court.

The WITNESS. Well, that is how it has to be, because I won't answer.

The COURT. You will not answer?

The WITNESS. I won't answer.

Ruling of Court

The COURT. All right. Then, as a result of that, the Court finds that you are in contempt of this court for refusal to answer the question.

50 Mr. NORRIS. If your Honor please, if I may make a statement at this point. I do not think the witness intends to be contemptuous, but she does feel that there is some question of law of some magnitude with regard to the ruling, and she would

want me to at least make that statement on her behalf at this time. I understand quite clearly that the court directed her to answer. She does not intend to be contemptuous; and I do not think anything she has said or done in relation to this case thus far indicates any ill feeling in regard to the Court. But there is a question of some substance and magnitude here with regard to the fundamental right in relation to this type of proceeding, in this case. I believe she wants me to make that statement.

The Court. This is not a question of whether she intends to be contemptuous. She is in contempt. She refuses to answer this question, after I have directed her to answer, and explained the reason why she should answer. I have given her plenty of opportunity to understand what the situation is. I have explained to her the reason for my ruling, and I have explained to you the reason for my ruling. I afforded you the opportunity yesterday, and again last night, to present any law that you might find that would touch on this question that would seem to indicate that the law might be other than the Court has interpreted it. The Court feels that the same rule applies in a civil suit as it does in a criminal case, and even for perhaps a stronger reason.

Therefore, the witness, if she refuses to answer the question, as she has refused to answer the question, she is now in contempt of this court.

51 I do not want any misunderstanding as to the ruling of the court.

Mr. HAMBORSKY. May I continue, your Honor?

The Court. You may continue. I will impose punishment for contempt of court later.

By Mr. HAMBORSKY:

Q. Isn't it true that in 1947 you were a member of the McGraw Communist Club, District No. 7 of the Communist Party of the United States?

A. The Fifth Amendment.

The Court. I direct you to answer.

A. I am sorry, your Honor, I just won't answer.

The Court. All right. Then you are in contempt of court for refusing to answer that question.

By Mr. HAMBORSKY:

Q. Do you know what the Michigan School of Social Sciences is?

The Court. Answer the question.

A. I don't know.

Q. Do you know Barry Cody?

A. I refuse to answer, on the Fifth Amendment.

The COURT. I direct you to answer.

A. I am sorry, your Honor, I can't answer.

The COURT. All right. I will say this, that each of the questions, or at least as to this question, and the previous questions you refused to answer, and any further questions that you then

refuse to answer, which I do direct you to answer, that the

52 Court holds that you will be in contempt of court, for and if you do refuse to answer any other questions which the Court directs you to answer.

By Mr. HAMBORSKY:

Q. Isn't it true that Barry Cody and you were in the same Communist Party unit as early as 1945?

A. That is not true.

Q. Were you ever in any Communist Party club with Barry Cody?

A. I refuse to answer; the Fifth Amendment.

Q. What year was the first time that you were a member of the same Communist Party Club as Barry Cody?

A. The Fifth Amendment.

The COURT. I direct you to answer.

A. I am sorry, your Honor, I just cannot answer.

By Mr. HAMBORSKY:

Q. Isn't it true that there was an executive board meeting of the McGraw Communist Club held at your house in 1948?

A. The Fifth Amendment.

The COURT. Answer the question.

A. I am sorry.

The COURT. Do you refuse to answer the question?

A. I refuse to answer it.

By Mr. HAMBORSKY:

Q. Isn't it true that you have paid Communist Party dues in the McGraw Communist Club?

A. The Fifth Amendment.

The COURT. Answer the question.

A. I am sorry, your Honor.

The COURT. Do you refuse?

53

A. I refuse to answer.

By Mr. HAMBORSKY :

Q. Did you attend an affair of the Communist Party celebrating the birthday of William Z. Foster, national chairman of the Communist Party?

The COURT. Did you give a date for that, Mr. Prosecutor?

Mr. HAMBORSKY. At any time that it was celebrated.

A. I never did.

Q. You never did?

A. No.

Q. What about February 24, 1951, at the Jewish Cultural Center, 2705 Joy Road, Detroit, Michigan.

A. I refuse to answer. The Fifth Amendment.

The COURT. Answer the question.

A. I am sorry, your Honor.

The COURT. Do you refuse to answer the question?

A. I refuse.

By Mr. HAMBORSKY :

Q. Were you a student in the class at the Michigan School of Social Science, in Detroit, in 1948 and 1949?

A. The Fifth Amendment.

Q. Do you refuse to answer the question?

A. That is right.

The COURT. I direct you to answer.

A. I am sorry, your Honor. I refuse.

By Mr. HAMBORSKY :

Q. Isn't it true that the Michigan School of Social Science is a school run by the Communist Party?

54 The COURT. Did you hear the question?

A. Yes.

The COURT. Did you understand it?

A. Yes. I am thinking.

The COURT. Answer it.

A. I will, as soon as I get—

The COURT. What is that?

The WITNESS. I will as soon as I think it over.

The COURT. That is not anything that requires very much thought, in the opinion of the Court. Either you know it, or you don't know it.

A. That is what I am trying to think.

The COURT. There has been a constant delay in your answers.

A. I don't know it.

The COURT. If you don't know it, you can say so. There have been constant delays in your answers to questions, that has prolonged the trial of this case away beyond any reasonable length of time that should have been required.

By Mr. HAMBORSKY:

Q. Did you attend a meeting of the Lenin—

The COURT. What was the answer to the last question?

Mr. HAMBORSKY. I think she answered it, that she didn't know.

The COURT. All right.

Q. Was that your answer?

55 A. That is right.

Q. Did you attend a meeting of the Lenin Memorial sponsored by the Communist Party at any time?

A. The Fifth Amendment.

The COURT. Answer the question.

A. I am sorry, your Honor.

The COURT. Do you refuse?

A. Yes.

The COURT. Do you refuse?

A. Yes, I said I refuse.

By Mr. HAMBORSKY:

Q. In 1948 did you hold Communist Party membership card No. 72066?

A. The Fifth Amendment.

The COURT. Answer the question.

A. I refuse to answer that one.

Q. Did you hold Communist Party membership card No. 72061 in 1949?

A. The Fifth Amendment.

The COURT. Answer the question.

A. I refuse to answer, your Honor.

By Mr. HAMBORSKY:

Q. Isn't it true that from about 1940 on, you never did leave the Communist Party?

A. As I stated before, I did not belong. I belonged to the Young Communist League, not to the Communist Party, and I dropped out in 1935.

Q. Would you answer the question.

56 Mr. NORRIS. If the court please, I think that is an answer.

The COURT. No, I do not think that is a direct answer.

Mr. NORRIS. There are several questions in that question.

The COURT. The answer is not responsive. Answer the question.

Mr. NORRIS. Would you have the question repeated?

The COURT. Yes, read it.

(The question was repeated by the reporter.)

A. Well, to answer I have to think.

The COURT. We have waited, I think, perhaps 30 seconds since that question was asked; we have waited approximately 30 seconds when the same question was asked just a few moments ago.

A. Well, your Honor, I did explain. I didn't belong to anything since 1935.

The COURT. You did not belong to what?

A. To the Young Communist League.

The COURT. That was not the question. The question was in respect to the Communist Party.

A. I did not belong to it.

By Mr. HAMBORSKY:

Q. You mean you never belonged to the Communist Party?

A. The Fifth Amendment.

The COURT. Answer the question.

A. I am sorry, your Honor, but I refuse to answer.

Mr. HAMBORSKY. That is all.

* * * * *

Opinion

* * * * *

I have one other matter to dispose of. This morning the defendant refused to answer certain questions submitted or propounded to her by the Government. She refused to answer, claiming her privilege not to do so by reason of the Fifth Amendment. At that time I cautioned the witness and explained to her that she was required to answer; that she had waived the benefit of the Fifth Amendment, she had waived the right to claim any privileges under the Fifth Amendment, by reason of having testified as a witness in her own behalf.

After I held the defendant in contempt of court a number of other questions were propounded, and to those questions the defendant also refused to answer, relying on the Fifth Amendment, her right not to testify by reason of the protection afforded her by the Fifth Amendment.

I repeat again, and I find again that the defendant is in contempt of this Court for refusing to answer the questions that the Court directed her to answer. In this connection I will now dictate upon the record an order which the Court feels is necessary under the rules of this Court. This order is to be transcribed and presented to the Court for signature, and to be entered of record.

In this case the defendant was called to the witness stand as the Government's first witness, under the court rule; and during her examination the defendant refused to answer certain questions propounded to her by the District Attorney, claiming her privilege not to answer by reason of the Fifth Amendment, and
58 the Court allowed her to claim that privilege. At the close of her examination as a Government witness under the court rule, she was submitted for cross-examination by her own counsel, who stated at that time as follows:

"If your Honor please, this is all examination under the statute, and I want to reserve the right to go into the matter with this witness. I won't cross-examine the witness at this point. I will put her on on direct.

"The COURT. All right. That is all."

When the Government rested its case, defendant's counsel, Mr. Norris, stated as follows:

"I would like to call Mrs. Stefana Brown.

"The COURT. All right. The record may show that Mrs. Brown has been previously sworn as a witness, and has already testified in this case. It will not be necessary to swear her as a witness again.

"Mr. HAMBORSKY. For the purpose of the record, they offer the witness to testify as a defense witness.

"The COURT. Yes, I think that is right; is it, Mr. Norris?

"Mr. NORRIS. That is right, your Honor.

"The COURT. You are calling her as your witness?

"Mr. NORRIS. That is right. The plaintiff has rested."

I have quoted there from the transcript of what appears at the close of the Government's examination of the defendant
59 when called as a Government witness, and also what occurred at the close of the Government's case.

The defendant was then examined by her own counsel at length with respect to the subject of this suit, and at the end of such direct examination the District Attorney asked of the defendant certain relevant and material questions with respect to these pro-

ceedings, on a number of which questions the defendant refused to answer, claiming her privilege not to do so by reason of the Fifth Amendment.

The Court directed the defendant to answer the questions, and she refused.

The Court directed that the testimony involved on the cross-examination of this witness by the District Attorney be transcribed and made a part of the record in this case, and this order, so that counsel and any reviewing court may see exactly what occurred and the nature of the questions asked of the defendant.

The Court is of the opinion that the defendant, in taking the stand as a witness in her own behalf, waived the right to exercise her privilege not to answer questions which might tend to incriminate her, by reason of the Fifth Amendment. And, having refused to answer a number of questions asked of her by the District Attorney, and having been directed by the Court to answer the questions, and having refused to answer the questions, the Court finds the defendant is in contempt of this Court.

Of course, this is a contempt that occurred within the presence of the Court.

Having found the defendant in contempt of Court, the Court, therefore, shall impose punishment for such contempt.

It is the sentence of this Court that the defendant be committed to the custody of the Attorney General of the United States for a period of six months, for this contempt of Court.

That is all.

Mr. NORRIS. If your Honor please, may I ask for a stay on that.

* * * * *

62 In United States Court of Appeals for the Sixth Circuit

Cause argued and submitted

April 2, 1956

This cause is argued by George W. Crockett, Jr., for appellant and by Dwight K. Hamborsky for appellee and is submitted to the court.

In United States Court of Appeals

Judgment

May 18, 1956

Appeal from the District Court of the United States for the Eastern District of Michigan,

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Michigan, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed.

64

No. 12628

United States Court of Appeals for the Sixth Circuit

Appeal from the District Court of the United States for the Eastern District of Michigan, Southern Division

STEFENA BROWN, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

Opinion

May 18, 1956

Before ALLEN, MARTIN and MILLER, Circuit Judges.

ALLEN, Circuit Judge. This appeal arises out of a judgment of conviction of criminal contempt rendered by the United States District Court because of appellant's refusal in a denaturalization proceeding to answer certain questions on cross-examination following her direct testimony as a witness. Her refusal was predicated upon the Fifth Amendment to the Federal Constitution.

The government, April 24, 1953, filed a complaint for cancellation of appellant's citizenship, alleging that appellant at the time of her registration pursuant to the Alien Registration Act of 1940, had knowingly made false representations as to her membership in any organization devoted in whole or in part to influencing or furthering the political activities of a foreign government. It was charged that appellant on August 22, 1946, in testifying before the naturalization examiners under oath made false state-

ments with reference to membership in the Communist Party and to the fact that she had not been a member of, or affiliated with, any organization teaching disbelief in, or opposition to, organized government. The complaint averred that as a result of concealment of material facts and false representations appel-

65 lant was admitted to citizenship and took the oath of allegiance to the United States, although she had been a member of the Communist Party of the United States and Young Communist League from 1933 to at least February 1937, and during this period these organizations advocated or taught the overthrow by force or violence of the government of the United States. Appellant's answer denied any fraud or misrepresentation on her part in the proceedings.

At the trial appellant was called as a witness by the government under Rule 43 (b) of the Federal Rules of Civil Procedure. She answered questions covering the period prior to her naturalization in 1946, but refused to answer questions relating to Communism or Communist activity subsequent to 1946, claiming her privilege under the Fifth Amendment. The court as to such questions sustained appellant's claim of privilege. She testified that she was never a member of the Communist Party at any time prior to her naturalization, that prior to 1946 she did not know three witnesses for the prosecution, but that she knew two others. At the conclusion of the government's examination defendant's counsel called appellant in direct examination as a witness for the defense. She testified that she belonged to the Young Communist League from 1930 until January, 1935, at which time she left the Young Communist League and from then until her naturalization in 1946 she did not engage in any Communist Party or Young Communist League activities. She reaffirmed the truthfulness of her answers in the naturalization proceeding and in taking the oath of allegiance and denied that she had ever belonged to any organization that taught or advocated the overthrow of existing government in this country. She denied that she was asked at the time of her naturalization whether or not she had been a member of a Communist organization and denied that she knew or had ever attended any closed Young Communist League or Communist meeting with the prosecution witnesses Virgil Stewart or Bernice Baldwin.

Appellant also testified on direct examination as follows with reference to the post-1946 period and with reference to her attitude at the time of the trial:

Q. In question 28 you were asked: "Are you a believer in anarchy, or the unlawful damage, injury or destruction of property, or of sabotage"? And you answered "No." Was that a true answer to that question?

66

A. That was a true answer.

Q. You say it was not only a true answer at the time you filed the petition, July 16, 1946, and is that the true answer today?

A. It is true. It was a perfectly true answer to that question. I never believed in overthrowing anything. I believe in fighting for this country. I like this country. I never told anybody I didn't.

Q. Did you ever teach or advocate anarchy or overthrow of the existing government in this country?

A. Teach?

Q. Did you ever teach the idea that we ought to overthrow the government of the United States?

A. No, I never did.

Q. Did you ever advocate that?

A. No.

Q. Did you ever say that we should?

A. No, I never did.

Q. To your knowledge, did you ever belong to any organization that taught or advocated anarchy or the overthrow of the existing government in this country?

A. No. As much as I know, I didn't belong, to destroy the country. I believe in helping the country, and helping the people. That was my life of living, not destroying the things that the people put up.

Q. Are you attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States?

A. That, I am.

When asked on cross-examination, "Are you now, or have you ever been, a member of the Communist Party of the United States?" she claimed her privilege under the Fifth Amendment and declined to answer. The court ruled that by taking the stand in her own defense appellant had waived her privilege and directed her to answer. Appellant then refused to answer the following questions, basing her refusal on the Fifth Amendment:

Q. Isn't it true that in 1947 you were a member of the McGraw Communist Club, District No. 7 of the Communist Party of the United States?

Q. Do you know what the Michigan School of Social Science is?

Q. Do you know Barry Cody?

67 Q. What year was the first time that you were a member of the same Communist Party Club as Barry Cody?

Q. Isn't it true that there was an executive board meeting of the McGraw Communist Club held at your house in 1948?

Q. Isn't it true that you have paid Communist Party dues in the McGraw Communist Club?

Q. Did you attend an affair of the Communist Party celebrating the birthday of William Z. Foster, national chairman of the Communist Party?

Q. Were you a student in the class at the Michigan School of Social Science, in Detroit, in 1948 and 1949?

Q. Did you attend a meeting of the Lenin Memorial sponsored by the Communist Party at any time?

Q. In 1948 did you hold Communist Party membership card No. 72066?

Q. Did you hold Communist Party membership card No. 72061 in 1949?

Q. You mean you never belonged to the Communist Party?

The court held that appellant in testifying as a witness in her own behalf waived the right to exercise her privilege under the Fifth Amendment and found her in contempt of court. Appellant contends that a party by taking the stand in his own behalf in a civil proceeding does not waive his Constitutional privilege against incrimination.

The denaturalization proceeding is a civil case. Although the Fifth Amendment in its express terms covers criminal prosecutions and not civil cases, the courts have extended the protection of the amendment to civil as well as criminal proceedings. The meaning of the privilege is not merely that a person charged with crime shall not be compelled to be a witness against himself in a criminal prosecution; but that a person shall not be compelled, when acting as a witness in an investigation, to give testimony tending to show that he himself has committed a crime. *Counselman v. Hitchcock*, 142 U. S. 547. Or, as stated in *McCarthy v. Arndstein*, 266 U. S. 34, 40, a bankruptcy case, the privilege "applies alike to civil and criminal proceedings, wherever the answer might tend to subject to criminal responsibility him who gives it."

68 The privilege may be waived, however. In *Raffel v. United States*, 271 U. S. 494, the Supreme Court held that a defendant in a criminal case who voluntarily testifies in his own behalf waives completely his privilege under the Fifth Amendment. As Mr. Justice Stone there stated, when the defendant takes the stand in his own behalf "within the limits of the appropriate rules he may be cross-examined as to the facts in issue. . . . He may be examined for the purpose of impeaching his credibility. . . . If, therefore, the questions asked of the defendant were logically relevant, and competent within the scope of the rules of cross-examination, they were proper questions, unless there is some reason of policy in the law of evidence which requires their exclusion."

The court pointed out that "The safeguards against self-incrimination are for the benefit of those who do not wish to become witnesses in their own behalf and not for those who do. There is a sound policy in requiring the accused who offers himself as a witness to do so without reservation as does any other witness."

This decision was followed in *Johnson v. United States*, 318 U. S. 189. The principal question there was whether it was error for the trial court, after granting the privilege against self-incrimination, to permit the prosecutor to comment upon the claim of privilege and to permit the jury to draw any inference therefrom. The Supreme Court in ruling upon this point held that, since the petitioner, who was on trial for willful attempt to defeat and evade income taxes, took the stand and in direct examination made statements in self-defense, he waived the privilege. On page 195 the court quotes §Wigmore on Evidence, 3rd Ed. (1940), Section 2276 (2) to the effect that his "voluntary offer of testimony upon any fact is a waiver as to all other relevant facts, because of the necessary connection between them all." The District Court in the *Johnson* case, *supra*, had upheld the claim of privilege, but the Supreme Court indicated, 318 U. S. 196, that it would "not have been error for the court to deny petitioner's claim of privilege."

Two questions arise in this case; therefore: (1) Does the rule in *Raffel v. United States*, *supra*, and *Johnson v. United States*, *supra*, apply in civil proceedings? (2) Are the questions asked in cross-examination here and not answered by appellant relevant to her story told on direct examination? If the rule applies in civil cases, and if the questions asked were relevant, the judgment of

the District Court must be affirmed. It is not claimed that the testimony sought to be elicited is not relevant and our consideration of the record forces us to conclude that they are.

69 As to the question whether the same rule of waiver of the constitutional privilege applies in civil as in criminal cases, we are cited to no decision specifically in point. We do not consider the question as to whether appellant's merely taking the stand constitutes a waiver. Here she testified at length in her own defense and our conclusions are based upon that fact. Both parties concede that this is a criminal contempt committed in the presence of the court and punishable under Title 18 U. S. C., Section 401. (Cf. *Nye v. United States*, 313 U. S. 33). We think this circumstance is not important.

Appellant's position briefly stated is that the waiver of a constitutional right must not be presumed and that when she testified in her own defense as to the allegations of false representation alleged in the complaint she did not intend to waive the privilege of the Fifth Amendment. It is argued by intelligent counsel that her action does not clearly show an intent to waive the privilege and that under *Glasser v. United States*, 315 U. S. 60, 70, we are compelled to indulge every reasonable presumption against the waiver of a fundamental constitutional right. But if appellant's contention is correct, the right of cross-examination, which is called the most efficacious test devised by the law for the discovery of truth, will be cut off in this case after appellant on direct examination has told her story in detail. Cross-examination is "the great and permanent contribution of the Anglo-American system of law to improved methods of trial procedure". Wigmore on Evidence, Vol. 5, 3rd Ed., Section 1367. The fact that appellant demands that the cross-examination of her story be cut off is all the more pertinent because the right of cross-examination has its root in the Federal Constitution. The essential purpose of confrontation is cross-examination. As Mr. Chief Justice Rugg, speaking for the Supreme Judicial Court of Massachusetts, in *Commonwealth of Massachusetts v. Gallo*, 175 N. E. 718, pointed out, "One main purpose of the rules of the common law as to the production of testimony in criminal cases is that its credibility shall be tested by cross-examination." See also 58 Am. Jur. 340. In *Snyder v. Massachusetts*, 291 U. S. 97, opinion by Mr. Justice Cardozo, it is declared that "the privilege to confront one's accusers and cross-examine them face to face is assured to a defendant by the Sixth Amendment in prosecutions in the federal

courts. . . ." Under the Sixth Amendment the right of an accused to be confronted by the witnesses against him imports the constitutional privilege to cross-examine the opposing witness. *State of Maine v. Crooker*, 123 Me., 310, 33 A. L. R. 70. 821. See also 14 Am. Jur. 889, Note 18 and numerous cases cited. Cf. *Dowdell v. United States*, 221 U. S. 325, in which Mr. Justice Day points out that the provision of the Philippine statute which was substantially taken from the Bill of Rights of the Federal Constitution, was to give the accused "an opportunity of cross-examination" and "particularly to preserve the right of the accused to test the recollection of the witness in the exercise of the right of cross-examination."

The right of cross-examination thus held to be inherent in the constitutional right of confrontation belongs to the state, as well as to the accused. *Powers v. United States*, 223 U. S. 303. In that case the accused voluntarily took the stand and testified in his own behalf. The court held, p. 314, that he was properly "subjected to a cross-examination concerning his statement. 'Assuming the position of a witness, he is entitled to all its rights and protection and is subject to all its criticisms and burdens' and may be fully cross-examined as to the testimony voluntarily given." *Reagan v. United States*, 157 U. S. 301, 305. The witness under such circumstances "is not permitted to stop, but must go on and make a full disclosure." *Brown v. Walker*, 161 U. S. 591, 597. *Tomlinson v. United States*, 93 Fed. (2d) 652 (C. A. D. C.), certiorari denied 303 U. S. 642. Moreover, these decisions are not limited to instances where the accused admits a criminal act. He may, as this appellant has done, deny any criminal act, but his denial if given on the stand in his own defense is subject to cross-examination.

The cross-examination of a witness is a matter of right. *Fahey v. Clark*, 125 Conn. 44; *Rabirecki v. Virgil*, 127 Atl. 594; *Alford v. United States*, 282 U. S. 687, 691. We conclude that the rationale of the rule as to waiver of the privilege by an accused who voluntarily offers himself as a witness in his own behalf and testifies in chief applies in civil cases. The appellant here may not prevent or defeat cross-examination by claiming protection against compulsory self incrimination under the constitutional provision. Since cross-examination is a basic right rooted in the Constitution of the United States it should not be eliminated except by the highest authoritative, legislative, or judicial expression.

In the *Raffel* case, *supra*, and *Johnson v. United States*, *supra*, no subtleties were indulged in as to what the defendant intended

to do in the way of waiving the privilege. It was held that a defendant in a criminal case who voluntarily testifies in his own behalf completely waives his privilege. This appellant voluntarily testified in her own behalf. There is neither logic nor justice in the contention that she has the benefit of the Fifth Amendment but none of its burdens. When appellant voluntarily offered in her own behalf on direct examination facts material to the issues in the denaturalization proceedings and facts with reference to the period subsequent to 1946, she was compelled to do so "without reservation, as does any other witness." *Raffel v. United States, supra*. The waiver is not partial. Having cast aside the cloak of immunity, the party may not resume it at will.

The instant case involves the question of appellant's connection with the Communist Party. But the question of self incrimination may arise in many other types of controversy. In a contract case evidence may be adduced tending to convict a party of perjury. Now and then evidence presented tends to convict a party of forgery. In tax cases the record often tends to convict a defendant in a civil case of violation of criminal law. To hold that a defendant, under the claim of protection against self incrimination, may tell his full, self-serving story without any test of its truth by cross-examination is to make a mockery of the judicial proceeding.

We conclude that the rule of waiver applicable in criminal cases under *Raffel v. United States, supra*, is applicable here and required appellant to answer the questions propounded. Any other conclusion would have wide repercussions in many cases involving other situations than that here presented. If in civil cases which involve features of criminality witnesses and parties connected with such possible charges were excused from cross-examination, the opportunity of exposing fallacy, misstatement, or bias would be seriously curtailed. The statement of Judge Learned Hand in *United States v. St. Pierre*, 132 Fed. (2d) 837 (C. A. 2), although made in a criminal case, is squarely applicable. He said:

"The law in this country . . . rests upon the obvious injustice of allowing a witness, who need not have spoken at all, to decide how far he will disclose what he has chosen to tell in part, and how far he will refuse to let his veracity be tested by cross questioning. In adversary cases it is hard to see how a trial could go on, if this were allowed."

The judgment of the District Court is affirmed.

[Petition for rehearing covering 9 pages filed omitted from this print. It was denied, and nothing more by order.]

72 In United States Court of Appeals

The Petition for Rehearing is denied.

Order denying rehearing

Filed June 12, 1956

73 [Clerk's Certificate to foregoing transcript omitted in
printing.]

74 Supreme Court of the United States

No. 125 Misc., October Term, 1956

STEFENA BROWN, PETITIONER,

vs.

UNITED STATES OF AMERICA

Order granting certiorari

November 13, 1956

On petition for writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit.

On consideration of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 570 and placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

NOVEMBER 13, 1956.